
Wisconsin Legislative Council

INFORMATION MEMORANDUM



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BREWERS AND BREWPUBS IN WISCONSIN

Brewers and brewpubs are part of the first tier in Wisconsin’s three-tier structure for regulating the alcohol beverages industry. As part of that structure, state law generally requires that alcohol beverages be produced by an authorized manufacturer, such as a permitted brewer or brewpub, before they may be distributed by an authorized wholesaler and sold by a retailer to consumers, with certain exceptions.¹ A person must obtain a brewer’s or brewpub permit from the Department of Revenue (DOR) to manufacture fermented malt beverages (“beer”) in Wisconsin.² [ss. [125.02 \(2\)](#), [125.04 \(1\)](#), [125.29](#), and [125.295](#), Stats.]

While brewpubs and brewers may be indistinguishable to consumers, they differ in several ways, including the number of possible locations, limits on manufacturing and self-distribution, and the manner of making retail sales. Wisconsin has been home to breweries since prior to statehood.³ In 2007, brewpub permits were created with the intention of allowing certain beer manufacturers that operate restaurants with more than two locations to sell their own beer at each location.⁴ This information memorandum provides an overview of the differences between brewer and brewpub permits.

GENERAL STATE AND FEDERAL PERMIT REQUIREMENTS

Under Wisconsin law, brewers and brewpubs must obtain a separate permit for each premises. A permit lasts for two years. Applicants must submit a permit application [form](#) to DOR and meet certain minimum qualifications. For example, as will be discussed in more detail below, a person may not hold certain cross-tier interests or both a brewer and brewpub permit. [ss. [125.04](#), [125.29 \(1\)](#), and [125.295](#), Stats.]

A brewer or brewpub permit is required to manufacture beer for sale or transportation.

Brewers and brewpubs, like all alcohol beverage manufacturers, are also subject to the Food Safety Code, which is enforced by the Department of Agriculture, Trade, and Consumer Protection (DATCP). The Food Safety Code imposes several requirements, such as a

¹ Commonly referred to as the “three-tier system,” this structure was first developed after Prohibition and is premised on the idea that separating the manufacture, distribution, and retail sale of alcohol reduces problems such as bootlegging, retailers owned or controlled by breweries (known as “tied houses”), and the incentive to over-serve consumers. For more information on the three-tier system, see Legislative Council, [Overview of Alcohol Beverages Regulations](#), Information Memorandum (March 2021).

² A permit is not required for the making of homemade beer, or homebrewing, if the homebrewer does not receive compensation, the beer is not offered for sale, and the homebrewer makes less than 100 gallons of beer in a year (or 200 gallons if the person lives in a household with two or more persons). The beer can be consumed by the homebrewer, friends, and family at any private location where the possession and consumption of alcohol is permissible. [s. [125.06 \(3\)](#), Stats.]

³ Wisconsin Historical Society, [Breweries, Beer and Bars in Wisconsin History – Image Gallery Essay](#).

⁴ See [2007 Wisconsin Act 20](#) and Colin Fly, *Proposed Law Has State Brewers Foaming in Anger*, Wisconsin State Journal, July 11, 2007.

requirement to hold a food processing permit on any premises where alcohol beverages are manufactured or bottled for sale.⁵ [s. [97.29](#), Stats.]

Unlike brewers, brewpubs must also hold a Class “B” beer retail license to sell beer for consumption on the brewpub’s premises and must operate a restaurant on the premises. A brewpub may hold a “Class B” intoxicating liquor (spirits and wine, “liquor”), or a “Class C” wine-only license to sell wine, but only for consumption on the premises of the brewpub’s restaurant. In addition, a brewpub may have up to six locations as part of a **brewpub group**, where all brewpubs share membership with the brewpubs in the group and are, among other requirements, considered a single taxpayer for federal tax purposes. For a brewpub group, each brewpub location must satisfy the requirements of holding a Class “B” beer retail license and operating a restaurant on the premises. [ss. [125.02 \(2p\)](#) and [125.295 \(2\) \(a\) 3.](#) and [\(3\)](#), Stats.]

Brewers and brewpubs also must comply with federal requirements, such as filing a notice and obtaining approval from the [Alcohol and Tobacco Tax and Trade Bureau](#) (TTB), a bureau within the U.S. Department of Treasury; registering with the [Food and Drug Administration](#); filing a brewer’s bond; and complying with labeling requirements.⁶ Under federal law, both types of permittees are regulated as manufacturers of beer, subject to the same requirements.

AUTHORIZED ACTIVITIES

While both types of permits authorize the production of beer, brewer and brewpub permits differ in the activities authorized to be conducted relating to manufacturing, making retail sales to consumers, and distributing to retailers. A brewpub group may have more locations than a brewer, but brewpubs are subject to additional limits for manufacturing and distributing their beer.

Activities Authorized for Brewers

Manufacturing

A brewer’s permit authorizes the manufacturing of beer and certain activities related to manufacturing, including the following: (1) bottling,⁷ packaging, possessing, and storing beer on the brewer’s permitted premises; (2) transporting beer between the brewer’s permitted premises and a permitted warehouse;⁸ and (3) selling or delivering beer from the brewer’s permitted premises to a permitted beer wholesaler. [s. [125.29 \(3\)](#), Stats.]

Brewers, unlike brewpubs, may engage in contract brewing. Contract brewing is an arrangement where one party provides a beer recipe (“recipe-brewer”) and another party manufactures the beer using this recipe on its premises (“production-brewer”). DOR advises that both brewers must hold a brewer’s permit for the location where the beer is manufactured. [[DOR on Tap](#), August 17, 2021.]

State law regulates the brewing process and tax obligations of the brewers engaged in contract brewing. The recipe-brewer must certify that it is contracting with a production-brewer, that the contract specifically provides that the production-brewer is an agent of the recipe-brewer, and

⁵ For more information, see DATCP’s [website](#) on food safety.

⁶ For more information on federal requirements, see TTB, [Beer Industry](#).

⁷ A food processing plant license is required for any facility that bottles beer. [s. [97.29](#), Stats.]

⁸ An alcohol beverages warehouse permit authorizes a permittee to store and warehouse alcohol beverages on the warehouse premises. [s. [125.19](#), Stats.] A brewpub may not hold an alcohol beverage warehouse permit. [s. [125.295 \(2\) \(a\) 6. f.](#), Stats.]

that the recipe-brewer has retained the right to control the production-brewer's work. The parties also must designate the premises where the production-brewer will brew the beer as the exclusive permitted brewery premises; if a recipe-brewer contracts to have beer manufactured at multiple premises, it must submit a separate brewer's permit application for each location. [s. [Tax 7.23 \(4\)](#), Wis. Adm. Code.]

Distribution to Retailers

In order to maintain the three-tier structure of Wisconsin's alcohol beverages regulations, brewers are generally prohibited from selling their beer directly to retailers and may only distribute beer through a permitted beer wholesaler. The brewer and beer wholesaler must have a written agreement that is exclusive for the brand in a particular designated sales territory and that specifies the precise geographic area of the wholesaler's designated sales territory.⁹ [ss. [125.29 \(3m\) \(a\)](#) and [125.34](#), Stats.]

Some brewers, however, have a limited ability to self-distribute. Generally, a brewer that manufactures 300,000 or fewer barrels of beer per year may self-distribute its beer to retailers in original unopened packages or containers. These brewers are sometimes referred to as "craft" brewers because of their smaller size. Additionally, a brewer of any size may also self-distribute beer for up to a year if the authorized wholesaler is unable to do so for any reason that is not the result of an action by the brewer, such as the discontinuation of the wholesaler's distribution rights, the wholesaler's bankruptcy, or criminal prosecution of the wholesaler. [s. [125.29 \(3m\)](#), Stats.]

Retail Sales to Consumers

A brewer's permit allows the retail sale of beer at two locations: the brewer's premises and a separate, off-site retail location established by the brewer. At those locations, a brewer may sell beer manufactured by the brewer or other Wisconsin brewers either for off-premises consumption, if sold in original unopened packages, or for on-premises consumption. [s. [125.29 \(3\)](#), Stats.]

A brewer may operate a restaurant on the brewer's premises and at the brewer's off-site retail location, but is not required to do so. A brewer also may provide consumers with free samples from the brewer's premises, a Class "A" beer retail premises, or an off-site retail outlet established by the brewer, subject to certain conditions, such as a limit of three fluid ounces per sample. [ss. [125.06 \(1\)](#), [125.29 \(3\) \(i\)](#) and [\(6\)](#), and [125.33 \(12\)](#), Stats.]

As previously mentioned, a brewer's permit authorizes the operation of an off-site retail location. Unlike Class "B" beer retailers, brewers are not required to obtain municipal approval for the off-site retail location, but may still be subject to municipal zoning and other local restrictions. According to DOR, a brewer that wishes to open an off-site retail outlet should submit an application to DOR at least 15 days in advance of any request. DOR will then review municipal ordinances to determine whether operation of the off-site retail outlet is permissible. [[DOR on Tap](#), May 2021.]

⁹ For more information on beer wholesalers, see Legislative Council, [Beer and Liquor Wholesalers](#), Information Memorandum (March 2021).

Activities Authorized for Brewpubs

Manufacturing

Brewpubs may engage in similar manufacturing activities to brewers, but are restricted in the amount of beer produced and in the location of production. A brewpub permit authorizes the manufacturing of beer **on the premises** of the brewpub and certain activities related to manufacturing, including: (1)

bottling beer manufactured on the brewpub premise; (2) possessing and storing beer; (3) selling or delivering beer to a permitted beer wholesaler; and (4) transporting beer manufactured on the brewpub premises between the brewpub group's brewpubs and Class "B" beer premises.

Additionally, brewpubs are restricted in the amount of beer they may manufacture. A brewpub group may manufacture a maximum of 10,000 barrels of beer per year. [s. [125.295](#), Stats.]

Brewpubs may engage in similar, but more limited, manufacturing activities. For example, all manufacturing must occur **on the premises** of the brewpub group.

For brewpub groups, manufacturing may occur at any or all of the brewpub premises, as long as the entire manufacturing process occurs at one location. For example, a brewpub group may not manufacture beer at one brewpub location and then bottle at another. This requirement prevents a brewpub from engaging in contract brewing and hiring a production brewer to brew beer on the production brewer's premises for sale under the brewpub's brand. [s. [125.295 \(1\)](#), Stats.]

Distribution to Retailers

A brewpub's ability to distribute beer is similar to that of a brewer, but more limited in the amount of beer that may be self-distributed. A brewpub group may sell beer in original unopened packages to a beer wholesaler for the wholesaler to distribute the brewpub's beer. The brewpub may also self-distribute up to 1,000 barrels of its beer per calendar year to retailers; any amount of the brewpub's beer beyond 1,000 barrels must be distributed by a beer wholesaler. For a brewpub group, the 1,000 barrel limit applies to the entire brewpub group. As with brewers, the brewpub and beer wholesaler must have an exclusive written agreement for the brand in a particular designated sales territory. [ss. [125.295 \(1\) \(f\)](#) and [\(g\)](#) and [125.34 \(3\)](#), Stats.]

Retail Sales to Consumers

As previously mentioned, a brewpub must hold a Class "B" beer retail license for, and operate a restaurant on, the brewpub premises. A Class "B" beer retail license authorizes the sale of beer for on- or off-premises consumption. From that premises, the brewpub must also sell beer manufactured by a brewer other than the brewpub group. Unlike brewers, brewpubs may hold a "Class B" liquor or "Class C" wine retail license for the restaurant on the brewpub premises. A brewpub group may operate six retail locations, rather than the two retail locations authorized by a brewer's permit. [ss. [125.26 \(1\)](#) and [125.295 \(3\) \(c\)](#), Stats.]

A brewpub also may sell refillable containers of 24 ounces of volume or more with beer that is manufactured on the premises and filled at the customer's request. These sales are commonly made in 64 ounce refillable glass bottles, commonly referred to as "growlers."¹⁰ [s. [125.295 \(1\) \(c\)](#), Stats.]

¹⁰ For more information, see TTB [Beer FAQs](#), B9.

INTEREST RESTRICTIONS AND “TIED-HOUSE” LAW

As was noted, Wisconsin’s three-tier system is premised on the idea that separating alcohol beverage manufacturers, wholesalers, and retailers reduces problems such as bootlegging, the ownership or control of retailers by breweries, and the incentive to over-serve consumers. Wisconsin’s “tied-house” law and restrictions on cross-tier interests help maintain those tiers by generally prohibiting brewers and brewpubs from holding any interest in another tier of the beer industry or providing anything “of value” to beer retailers.¹¹

Cross-Tier Interest Restrictions

Brewers and brewpubs are subject to similar restrictions on holding an interest in cross-tier activities. A person who holds a **brewer’s permit** generally may not hold a Class “A” beer license, a Class “B” beer license, a beer wholesaler’s permit or an ownership interest in any wholesaler, or a brewpub permit. A brewer may operate a restaurant on the brewery premises and at the brewer’s off-site retail location, but generally may not operate a restaurant at any other location. [s. [125.29 \(2\)](#), [\(5\)](#), and [\(6\)](#), Stats.]

A **brewpub** (or brewpub group) may not hold or have a direct or indirect ownership interest in a premises that operates under a Class “A” beer retail license, a “Class B” liquor license or permit other than for the restaurant on the brewpub premises, a beer wholesaler’s permit, a brewer’s permit, a “Class C” wine restaurant license other than for the restaurant on the brewpub premises, or an alcohol beverage warehouse permit. As discussed in the previous section, a brewpub must operate a restaurant that holds a Class “B” beer retail license on the premises, but may not otherwise hold or have a direct or indirect ownership interest in a Class “B” beer retail licensee. [s. [125.295 \(2\) \(a\)](#), Stats.]

“Tied-House” Law

Both **brewers** and **brewpubs** are subject to Wisconsin’s “tied-house” law, which restricts the dealings between the manufacture and retail tiers. A tied-house is a brewery-owned or brewery-controlled bar or tavern and was common prior to Prohibition. Wisconsin’s tied-house law generally prohibits brewers and brewpubs from providing a Class “B” beer licensee or permittee with anything “of value,” such as furniture, equipment, or money.¹² By restricting the ability of a brewery to control a retailer, the Legislature intended to “prevent manufacturers and wholesalers from acquiring complete or partial control of specific Class ‘B’ retailers, directly by owning them or indirectly by creating financial or moral obligations.” [61 Op. Att’y Gen. 69 (1972).]

Brewers and brewpubs are subject to Wisconsin’s “tied-house” law, which generally prohibits providing things of value to retailers.

The law provides for several exceptions, however, to this general rule. Specifically, a brewer or brewpub may provide any of the following to a Class “B” beer licensee or permittee:

- Signs, clocks, or menu boards with an aggregate value of up to \$2,500.
- Beer tap handles.
- Signs made from paper, cardboard, plastic, or vinyl for placement inside the premises.

¹¹ For more information on Wisconsin’s three-tier system and its restrictions, see Legislative Council, [Alcohol Beverage Three-Tier Laws](#), Issue Brief, October 2019.

¹² The law also applies to the relationship between a beer wholesaler and a retailer.

- “Usual and customary commercial credit” for beer industry products.

A brewer or brewpub also may sell any of the following to a Class “B” beer licensee or permittee:

- Advertising matter, nonmechanical coolers, and tavern supply items, at fair market value.
- Equipment to preserve and maintain sanitary dispensing of beer, at fair market value.
- Dispensing equipment, such as beer storage boxes or tapping equipment, if sold at fair market value or maintained for fair consideration for cash or credit of up to two years.
- Consumable merchandise intended for resale.

Finally, a brewer or brewpub may do any of the following:

- Purchase advertising and other services and rights for a fair consideration from a corporate Class “B” licensee or permittee, if the Class “B” beer licensee or permittee is a professional sports team.
- Contribute money or other things of value to benefit certain nonprofits that conduct festivals.
- Contribute money or other things of value to or purchase advertising from an institution of higher education, if unrelated to the institution’s sale of beer.
- Purchase advertising for a fair consideration from a bona fide national or statewide trade association that derives its principal income from membership dues of Class “B” beer licensees.
- Purchase advertising from a person who does not hold an alcohol beverages license and who conducts sweepstakes, contests, or promotions on the premises of a Class “B” beer licensee or permittees that sell the brewer or brewpub’s products.
- Conduct sweepstakes, contests, or promotions on the premises of Class “B” beer licensees or permittees who sell the brewer or brewpub’s products.
- Purchase products from a Class “B” beer licensee or permittee.
- Provide reasonable business entertainment to a Class “B” beer licensee or permittee by providing tickets, food and beverages, and ground transportation for sports events or concerts, up to a \$500 value.
- Provide taste samples at a trade show, conference, convention, or business meeting of a retailer’s trade association held on retail premises.
- Provide taste samples at a beer-tasting event on retail premises, if the brewer or brewpub charges a fee and the samples are provided by a brewer or brewpub or its representatives.

[s. [125.33](#), Stats.]

RESTRICTIONS AND AUTHORIZED ACTIVITIES BY PERMIT TYPE

The following table provides an overview of whether certain types of activities are authorized for brewers or brewpubs.

| Type of Activity | Brewer | Brewpub |
|--|--|--|
| <i>Limit on manufacturing?</i> | No production limit. | Yes; may manufacture up to 10,000 barrels per year and all manufacturing must occur on premises. |
| <i>May engage in contract brewing?</i> | Yes, as permitted recipe-brewer or production-brewer. | No; all manufacturing must occur on premises of brewpub within brewpub group. |
| <i>Able to distribute directly to retailers?</i> | No, unless the brewer manufactures fewer than 300,000 barrels per year. | May self-distribute up to 1,000 barrels to retailers per year. Any other distribution must be through permitted beer wholesaler. |
| <i>Able to make retail sales of own beer from premises?</i> | Yes, for on- or off-premises consumption. | Yes, for on- or off-premises consumption. Must hold Class “B” beer retail license and operate restaurant from premises. |
| <i>Maximum number of locations?</i> | Up to two per permit (brewery premises and an off-site retail location). | One per permit, but brewpub group may hold up to six permits. |
| <i>Required to obtain Class “B” beer retail license from municipality?</i> | May not hold a Class “B” beer retail license. | Yes. |
| <i>Subject to tied-house law?</i> | Yes. | Yes, but must hold Class “B” beer retail license for premises. |
| <i>Subject to cross-tier interest restrictions?</i> | Yes. | Yes, but may hold “Class B” liquor or “Class C” wine retail license for restaurant on the brewpub premises. |

This information memorandum was prepared by Tom Koss, Staff Attorney, on November 28, 2022.